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From the Los Angeles Times

SMALL BUSINESS

Tax penalty reprieve brings collective sigh of relief at firms

A South El Monte firm was among those facing more than \$1 million in fines over the use of questionable tax shelters.

By Cyndia Zwahlen

July 14, 2009

Kustom Graphix, a small printing and graphic design shop in South El Monte, is among hundreds of small businesses nationwide celebrating a reprieve last week from potential jumbo Internal Revenue Service penalties.

At the urging of Congress, the IRS said that for smaller cases it would temporarily stop trying to collect the penalties that range from \$100,000 to more than \$1 million and were designed to snare major corporations using tax shelters.

Last month, senior Republicans and Democrats sent a letter to IRS Commissioner Douglas H. Shulman asking him to suspend enforcement for small businesses while they fixed what they called "disproportionate consequences" of a 2004 tax-shelter disclosure law.

"When I advanced this legislation to shut down tax shelters, I did not intend to bankrupt small businesses that had no ill intent," Sen. Charles E. Grassley of Iowa, the ranking Republican on the Senate Finance Committee, said in a news release. "I was focused on the big corporations that were actively seeking to hide their participation in tax shelters."

On July 7, Shulman agreed to suspend collection of the mandatory disclosure penalties through Sept. 30 for smaller cases.

"I am dismayed by the feedback that I have received from some of the most seasoned IRS examination professionals that this statutory provision, in certain cases, requires them to assess penalties that are way out of line with penalties for other similar cases of noncompliance," he wrote in letters to Grassley and other top members of the committee.

The deadline is expected to be extended to give Congress time to write and pass corrective legislation.

Shirley Hu, co-owner of Kustom Graphix, was relieved by the news. She said she was just glad her sleepless nights worrying about going to jail because she couldn't afford her potential \$1 million-plus penalty were over.

"It is very good news," Hu said.

The 2004 law has been successful in identifying and shutting down multimillion-dollar tax shelters used by large companies by requiring them to disclose certain transactions or face stiff penalties.

As the IRS has turned to transactions involving smaller amounts, it has targeted certain tax-free retirement plans bought by small businesses.

Most of the small businesses "had no idea what they were investing in was questionable, they were never told they were questionable," said Los Angeles attorney Alex Brucker, a principal of law firm Brucker & Morra.

"If they had known, they never would have invested in it," said Brucker, who as a board member of the Small Business Council of America has been pushing Congress to take action on the tax issue.

The IRS said its enforcement suspension applies to cases in which an individual taxpayer got a tax benefit of \$100,000 or less per year from a tax shelter; \$200,000 or less for other entities, such as partnerships or Subchapter S corporations.

Hu said the IRS had disallowed contributions of \$4,141 for the five years she contributed to a pension plan that she didn't know was under investigation.

She and the two other owners of the six-person commercial printer faced a total preliminary bill of \$8,385 in back taxes, \$5,985 in interest, which is still accumulating, and potentially \$1,635 in what are called accuracy penalties. Total tab: \$16,005 for the three owners.

Plus \$1.3 million in mandatory penalties in part for not sending an IRS disclosure form to a special office at the agency.

Hu said she was never given any reason to think the plan was suspect or told about the disclosure requirements.

"You rely on professionals," said Hu, who started Kustom Graphix in August 1987.

The three-year IRS audit has sapped her time and resources and hurt her business, she said.

Brucker said Congress never intended that result when it set up the law to catch big-pocket tax cheats.

L.A. tax amnesty

July is the final month of Los Angeles' tax-penalty amnesty program for businesses.

The three-month effort is aimed at getting companies to cough up back taxes in exchange for avoiding late penalties. The plan could bring in \$10 million at a time the city is facing a budget shortfall, the mayor's office said.

Still, businesses that apply for these penalty waivers must file any late tax returns and pay the delinquent taxes and any interest that has accumulated, as well as any collection fees owed.

Several city tax categories are covered by the program: business taxes; telephone, electricity and gas user taxes; commercial tenant occupancy taxes; transient occupancy taxes; and parking taxes.

More information and printable applications are online at www.lacity.org/finance/ amnesty. Mailed applications must be postmarked by July 31. They also can be dropped off at one of the eight offices listed online at www.lacity.org/finance/ finF.htm.

Business owners can also call the city's tax penalty hotline at (213) 978-1555 weekdays from 8 a.m. to 5 p.m.

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